

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 101 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANAND POLYMER

Versus

SAROGI POLY BARRIES PVT LTD.

Appearance:

MR LR PUJARI for Petitioner

OFFICIAL LIQUIDATOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 27/01/97

ORAL JUDGEMENT

1. This petition is filed by M/s. Anand Polymer, a partnership firm under Section 433 of the Companies Act, 1956 to pass an order for winding up of respondent-company namely M/s. Sarogi Poly Barries Pvt.Ltd.

2. It is the claim of the petitioner that petitioner had supplied colour (goods) to the respondent-company

under two bills bearing No.693 and 698, dated 17-1-95 and 20-1-95 respectively for the amounts of Rs.4,661=86 and Rs.60,095=57. It is the case of the petitioner that towards the said bills the respondent-company is owing Rs.52,738=02 and that though the petitioner-partnership firm had demanded the said amount from time to time, the respondent-company is not paying the same and the respondent-company had failed and neglected to pay the same. Though the statutory notice dated 19th July, 1995 has been served on the respondent-company, the respondent-company has not made payment. Thus, it is alleged that the respondent-company is not in a position to pay its debts, and, therefore, an order to wound up the said company be passed.

3. The claim of the petitioner is resisted by the respondent by filing affidavit in reply. It is contended that there is no admitted debt of the petitioner payable by the respondent-company. It is contended that there is a genuine dispute regarding the alleged debt of the respondent and consequently the present proceeding is not tenable in law. It is contended that the goods supplied by the petitioner to the respondent-company were of inferior quality and not upto the standard and due to the same, the respondent-company has suffered heavy losses. The respondent-company had informed the petitioner regarding the inferior quality of the goods and suffering of losses by the respondent-company. The petitioner's representative Shri Pankajbhai had visited the factory premises and had inspected the products of the respondent-company and had agreed that the quality of the goods were inferior in nature. It is further contended that the rates of goods mentioned in the bill were not agreed rates between the parties and there was also no agreement for making payment of interest @ 24 % . It is contended that as the goods were of inferior quality and as they were not upto the standard, the respondent had also returned some of the goods which were not consumed by the respondent. It is further contended that when the respondent was served with a statutory notice, a detail reply was sent to the petitioner stating therein that the goods supplied were of inferior quality and that on account of the inferior quality of the goods, respondent had to suffer in his business. Pankajbhai had inspected the goods and had agreed that the quality of the goods were inferior in nature and he had also agreed to settle the dispute, but in spite of this, the petitioner has taken recourse to this proceeding in order to coerce the respondent to make payment to the petitioner.

4. Therefore, on the submissions made before me the

only point which arises for my consideration is as to whether the present petition for winding up proceeding is to be admitted. My finding on the said point is in the negative for the reasons hereinafter stated.

5. It must be remembered that the proceeding under Section 433 and 434 of the Companies Act 1956 is not meant for recovery of the debts or dues. It is also settled law that if the non-payment of debt is on account of dispute of debt, then the court can rightly refuse to entertain a petition for winding up of the company. When the claim of the petitioner is disputed by the respondent-company by raising a bona fide dispute the court is justified in rejecting the petition filed under Section 433. (See A.I.R. 1971, S. C., 2600). Now in the instant case the petitioner himself has admitted in his petition that part of the goods supplied under the said 2 bills has been returned by the respondent and the petitioner had given credit for the said returned goods. But has not stated why they were returned. The very fact that the part of the goods sent under the bill has been returned by the respondent supports the claim of the respondent that the goods supplied were not of the standard quality and that they were of inferior quality. It must be further mentioned here that the respondent has also stated specifically that one Pankajbhairepresentative of respondent has visited the factory premises of the petitioner and has inspected the goods and had admitted that the goods were inferior in nature. Now inspite of this specific contention raised by the respondent, the petitioner has not filed any affidavit denying the said fact of said Pankajbhai visiting the factory premises of the respondent and on inspection admitting that the goods were of inferior quality.

6. Then the respondent has pointed out by producing the earlier bills of the petitioner-company that the rates mentioned in the bill in question are different and that thus there is no agreement regarding the rate. All the contentions raised by the respondent in the reply are not raised for the first time for the respondent for the sake of contention, but they were raised while sending reply to the statutory notice. It is also very pertinent to note that in the petition the petitioner has nowhere alleged that the respondent-company is also indebted to others and that the respondent-company is not in a position to satisfy it's debts. Therefore, in the circumstances, the contention raised regarding the genuineness of the debt by the respondent could not be said to be mala fide and that the circumstances are such

that this petition deserves to be admitted. The learned advocate has cited before the cases of ALUMINIUM EXTRUSIONS & INDUSTRIAL COM. VS. CENTRAL PAINTS 68 (1990) COMPANY CASES 477 ; DURGAPUR PROJECTS LTD.IN RE 53 (1983) COMPANY CASES 320 ; STRAW BOARD MFG.CO. VS. MAHALAKSHMI SUGAR MILLS, 71 (1991) COMPANY CASES, 544 AND WASINGHOUSE SAXBY FARMER LTD. IN RE 52 (1982) COMPANY CASES, 479 in support of his contention for admitting this petition. But in all those petitions it was found by the court that the dispute regarding the debt raised by the respondent was not bona fide one and that the disputes were fictitious and there was also material to show that the respondent-company was indebted and was not in a position to satisfy its debt. Therefore, those authorities are not applicable to the facts before me. The petitioner will have to go before the regular Civil Court to recover it's dues which are according to the petitioner payable by the respondent to the petitioner.

7. I, therefore, hold that the petition will have to be rejected. I accordingly dismiss the petition with no order as to costs.

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